IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SECOND DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO: 23946 of 2004

Between:

Md. Yousuf, s/o Bale,
Achampet Bus Depot, Mahabubnagar district.

..... PETITIONER

AND

1. The Depot Manager, APSRTC, Nagarkurnool Bus Depot,

Mahabubnagar District.
2 The Divisional Manager, APSRTC, Nagarkurnool Division,

Mahabubnagar District.
3 The Depot Manager, APSRTC, Achampet Bus Depot,

Mahabubnagar District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ or order or direction more particularly one in the nature of Writ of mandamus declaring that the action of the respondent No.1 in imposing the penalty of deferment of petitioners annual increments for a period of 2 years which shall have effect on future increments besides the period of suspension treated as "Non on Duty" for all purposes as illegal, arbitrary, unjust and unreasonable and disproportionate and consequently set aside the Proc.No. 01/2(3)/2001-NGKL dt.2-8-2002 and pass such other order or orders.

Counsel for the Petitioner: MR.P.VENKATESWAR RAO

Counsel for the Respondents: MR.P.VINAYAKA SWAMY

The Court at the stage of admission made the following:

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO: 23946 of 2004

ORDER:

Imposing the penalty of deferment of annual increment for a period of two years, which shall have effect on future increments, the present writ petition is filed.

2. The learned counsel for the petitioner contended that the petitioner was acquitted by the criminal Court and the departmental enquiry is also based upon the same allegations and therefore, the order of the disciplinary authority is to be set aside in view of the findings given in the judgment by the criminal Court.

3. The learned standing counsel for the respondent-Corporation contended that a provision of appeal is available to the petitioner and without exhausting the said remedy, the writ petition cannot be entertained.

4. The petitioner while performing his duty on vehicle, on route Pentlavelli-Hyderabad on 23.09.2001 met with an accident. For which a charge memo has been issued to the writ petitioner calling for his explanation. As the explanation is not found satisfactory, a regular departmental enquiry was conducted. In the enquiry, the enquiry officer basing on the findings available on record came to a conclusion that the charge leveled against the writ

petitioner has been proved and accepting the findings of the enquiry officer, the disciplinary authority passed an order imposing the penalty of postponement of two annual increments for a period of two years which shall have effect on future increments, besides the period of suspension treated as not on duty. Admittedly a statutory appeal is provided under the regulations. No doubt alternative remedy is not a bar for this Court to entertain this writ petition, but at the same time the jurisdiction of the disciplinary authority in passing the order is not under challenge and also it is not a case of violation of principles of natural justice. The entire case rests upon the acquittal of the writ petitioner in a criminal case.

5. Therefore, it is appropriate to direct the petitioner to file an appeal before the Divisional Manager. It is brought to the notice of this Court by the learned counsel for the petitioner that the appeal has to be filed within two months from the date of order of the disciplinary authority, but the same has not been filed by the petitioner before the appellate authority on the ground that a criminal case is pending. The same shall have to be considered by the respondents sympathetically.

6. Accordingly, the writ petition is disposed of with a direction to the petitioner to file an appeal before the respondent with a delay condonation petition and that petition has to be considered sympathetically by the Divisional Manager, in accordance with law, within three months from the date of filing of the appeal.

7. The writ petition is disposed of. No order as to costs.

22nd December, 2004. K.C.BHANU, J

Note:

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Furnish C.C. by one week.

B/o.

SKM

To

1. The Depot Manager, APSRTC, Nagarkurnool Bus Depot,

Mahabubnagar District.
2. The Divisional Manager, APSRTC, Nagarkurnool Division,

Mahabubnagar District.
3. The Depot Manager, APSRTC, Achampet Bus Depot,

Mahabubnagar District.

4. Two C.D. copies